

Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
January 09, 2023

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Proposed Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:)	Case No.: 22-14422-nmc
)	
MUSCLEPHARM CORPORATION,)	Chapter 11
)	
)	
)	
Debtor.)	Hearing Date: January 6, 2023
)	Hearing Time: 9:30 a.m. (PT)
)	

**ORDER AUTHORIZING MAINTENANCE
OF EXISTING BANK ACCOUNTS AND RELATED RELIEF**

Upon the motion (the “**Motion**”)¹ of MusclePharm Corporation, debtor and debtor-in-possession in the above-referenced proposed Chapter 11 case (“**Debtor**”), by and through its proposed counsel of record, Schwartz Law, PLLC, for entry of an order authorizing maintenance of existing bank accounts; and upon the record of the hearing held on the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of Debtor, its estate, creditors, and other parties-in-interest; and it appearing this proceeding is a core proceeding

¹ Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the Motion.

1 pursuant to 28 U.S.C. § 157(b); and it appearing that this Court has jurisdiction over the subject
2 matter of the Motion pursuant to 28 U.S.C. § 1334; and it appearing that venue is proper pursuant
3 to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has
4 been given under the particular circumstances and that no other or further notice is necessary; and
5 after due deliberation thereon, and good and sufficient cause appearing therefore,

6 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**; and it is further

7 **ORDERED** that Debtor is authorized to maintain the existing bank accounts listed on
8 **Schedule 1**, attached hereto (the “**Bank Accounts**”); and it is further

9 **ORDERED** that Debtor’s existing Bank Accounts shall be designated as debtor-in-
10 possession accounts; and it is further

11 **ORDERED** that intercompany inbound transfers to the Debtor shall be permitted under this
12 Order, but outbound intercompany transfers to non-debtor affiliates shall not be permitted under
13 this Order; and it is further

14 **ORDERED** that the Debtor is authorized to comply with the terms of that certain deposit
15 account control agreement (the “**DACA**”) between Prestige Capital Finance, LLC (“**Prestige**”) and
16 the Debtor, and pre-petition accounts can be released to Prestige in accordance with the DACA
17 without further Order of the Court; provided, however, all parties reserve their rights to assert
18 claims for clawback or other appropriate claims under applicable law with respect to any
19 outstanding pre-petition accounts not yet collected by Prestige; and it is further

20 **ORDERED** that any new bank account that Debtor opens shall be debtor-in-possession
21 accounts opened at authorized depositories; and it is further

22 **ORDERED** that the banks at which the Bank Accounts are maintained (each a “**Bank**” and
23 collectively, the “**Banks**”) are authorized and directed to accept and process deposits into Debtor’s
24 accounts, in whatever form received, and to process, honor and pay any and all checks, drafts,
25 automated clearing house transfers, and other electronic funds transfers (including the funding of
26 direct deposits to employee accounts) drawn or ordered on the Bank Accounts after the Petition
27 Date by Debtor; and it is further
28

1 **ORDERED** that, except for those checks, drafts, automated clearing house transfers, or
2 other electronic funds transfers that must be honored and paid in order to comply with any order(s)
3 of this Court authorizing payment of certain pre-petition claims, no checks, drafts, automated
4 clearing house transfers, or other electronic funds transfers ordered on the Bank Account prior to
5 the Petition Date but presented for payment after the Petition Date shall be honored or paid; and it
6 is further

7 **ORDERED** that the Bank at which the Bank Accounts are maintained is prohibited from
8 honoring automatic withdrawals from Debtor's secured and unsecured creditors; and it is further

9 **ORDERED** that Banks are prohibited from offsetting, freezing, or otherwise impeding the
10 use or transfer of, or access to, any funds deposited by Debtor in the Banks Accounts before or after
11 the Petition Date on account of or by reason of any claim (as defined in Section 101(5) of the
12 Bankruptcy Code) of the Bank against Debtor that arose before the Petition Date; and it is further

13 **ORDERED** that Debtor and the Banks and the Merchant Processors are hereby authorized
14 to continue to perform pursuant to the terms of any pre-petition agreements that may exist between
15 them, except and to the extent otherwise directed by the terms of this Order. The parties to such
16 agreements shall continue to enjoy the rights and remedies afforded them under such agreements,
17 except to the extent modified by the terms of this Order or by operation of the Bankruptcy Code;
18 and it is further

19 **ORDERED** that (i) Debtor is authorized to designate Eric Hillman (CEO) as an authorized
20 signatory of the Bank Accounts; (ii) Eric Hillman is authorized, in his sole and exclusive direction,
21 to remove any authorized signatories from the Bank Accounts; and (iii) the Banks are authorized
22 and directed to rely upon this Order for purposes of designating authorized signatories on the Bank
23 Accounts, without further corporate resolution; and it is further

24 **ORDERED** that as provided by Fed. R. Bankr. P. 7062, this Order shall be effective and
25 enforceable immediately upon entry.

26 **ORDERED** that the Court shall retain jurisdiction to hear and determine all matters arising
27 from the implementation of this Order.
28

Submitted by:

SCHWARTZ LAW, PLLC

By: /s/ Samuel A. Schwartz
Samuel A. Schwartz, Esq.
601 East Bridger Avenue
Las Vegas, NV 89101
Proposed Attorneys for Debtor

Approved:

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Jared A. Day
Jared A. Day, Esq.
United States Department of Justice
Attorney for the United States Trustee

Approved:

GARMAN TURNER GORDON

By: /s/ Mark M. Weisenmiller
Mark M. Weisenmiller, Esq.
Attorneys for Empery Tax Efficient, L.P.

Approved:

CARLYON CICA CHTD.

By: /s/ Candace Carlyon
Candace Carlyon, Esq.
Attorneys for Ryan Drexler

Approved:

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Jason Rosell
Jason Rosell, Esq.
*Attorneys for the Official Committee
of Unsecured Creditors*

Approved:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Oganna Brown
Ogonna Brown, Esq.
Attorneys for Prestige Capital Finance, LLC

SCHEDULE 1²

Account Holder:	Bank Name and Address:	Account No.	Type:
MusclePharm Corporation	JPMorgan Chase Bank, N.A. PO Box 182051 Columbus, OH 43218 - 2051	*****1512	Commercial Money Market
MusclePharm Corporation	Wells Fargo Bank, N.A. (182) PO Box 63020 San Francisco, CA 94163	*****4320	Operating
MusclePharm Corporation	Wells Fargo Bank, N.A. (182) PO Box 63020 San Francisco, CA 94163	*****4338	AP
MusclePharm Corporation	Wells Fargo Bank, N.A. (182) PO Box 63020 San Francisco, CA 94163	*****4353	Payroll
MusclePharm Corporation	Wells Fargo Bank, N.A. (182) PO Box 63020 San Francisco, CA 94163	*****4361	Factoring

² Only the last four digits of each account number are listed.

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement set forth in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☒ I have delivered a copy of this proposed order to all counsel and any unrepresented parties who appeared at the hearing, except those as to whom review was waived on the record at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated above.

Jared A. Day, Esq. **Approved/Disapproved**
United States Department of Justice

Mark M. Weisenmiller, Esq. **Approved/Disapproved**
Attorneys for Empery Tax Efficient, L.P.

Candace Carlyon, Esq. **Approved/Disapproved**
Attorneys for Ryan Drexler

Jason Rosell, Esq. **Approved/Disapproved**
*Attorneys for the Official Committee
of Unsecured Creditors*

Ogonna Brown, Esq. **Approved/Disapproved**
Attorneys for Prestige Capital Finance, LLC

- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

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